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EX PARTE OR LATE FILED

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory Review --)
Streamlining of Mass Media Applications,)
Rules, and Processes)

MM Docket No. 98-43

and)

In the Matter of)

MM Docket No 97-138

RM-8855

Review of the Commission's Rules)

RM-8856

regarding the main studio and local)

RM-8857

inspection files of broadcast television)

RM-8858

and radio stations)

RM-8872

COMMENTS AND LATE-FILED "EX PARTE" SUBMISSION

Cumulus Media Inc. ("Cumulus"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, respectfully submits its Comments on the *Notice of Proposed Rulemaking* (the "Notice"), MM Docket No. 98-43, released April 3, 1998.^{1/}

I. INTRODUCTION AND BACKGROUND

Cumulus is a radio broadcasting company focused on the acquisition, operation, and development of radio stations in mid-sized and smaller markets in the United States.

Cumulus has a particular interest in the instant proceeding because of the significant impact the

^{1/} Cumulus also respectfully submits the instant Comments on a late-filed, *ex parte* basis in the *Notice of Proposed Rulemaking*, MM Docket No. 97-138, released May 28, 1997, due to the significant degree of overlap between certain issues discussed herein and those pertaining to the location and maintenance of a broadcast station's local public inspection file in the latter Notice. Cumulus had only recently been established at that time and did not have an opportunity to comment in a timely manner in that proceeding.

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proposals addressed in the Notice, if adopted, would have on Cumulus' ability to serve the public interest.

Cumulus currently owns and operates over 60 radio stations in more than 14 markets throughout the country, making it one of the largest radio broadcasting companies in the United States, based upon number of stations and net revenues. Cumulus has employed a focused strategy of developing clusters of stations in demographically-diverse, rapidly-growing mid-sized and smaller markets. This strategy has enabled Cumulus to realize economies of scale in all facets of its operations, thereby delivering enhanced value to the public by synergizing its human, capital, and creative resources and improving the overall quality of the broadcast service provided by its stations.

It is specifically because Cumulus employs a growth strategy, based on efficiencies achieved by these clusters of stations, that the proposals in the Notice will, with few exceptions, allow both the Commission and Cumulus to utilize valuable resources more efficiently while continuing to protect and foster the public interest both have a duty to serve.

II. DISCUSSION

A. THE COMMISSION HAS AUTHORITY TO ADOPT THE PROSED CHANGES UNDER CONGRESSIONAL MANDATE AND THE PUBLIC INTEREST STANDARD.

1. Congressional Intent

The Telecommunications Act of 1996 ^{2/} envisions exactly the types of changes that the Commission proposes in the Notice. Congress' primary intent was to deregulate the communications industry, as evidenced by the elimination of archaic and unnecessary numerical

^{2/} Pub. L. No. 104-104, 110 Stat. 56 (1996) (hereinafter, "the Act").

restrictions on the national ownership of broadcast stations, as well as a substantial relaxation on the number of stations a single licensee may own in a particular market, among other provisions. Such deregulation has triggered the creation of a number of entities like Cumulus, which have been able to realize many of the significant benefits contemplated by the Act. Yet rules and regulations adopted before the Act, which may have suited an environment in which station ownership was generally limited and static, now are out of synch with the letter and spirit of the deregulatory environment the Act seeks to foster.

This proceeding is the next logical step in the deregulatory process and breaks no significant legal ground. The Commission therefore has not only the jurisdiction, but the duty, to adopt the proposals raised in the Notice.

2. The Public Interest Standard

The general “public interest” standard embodied in the Communications Act of 1934, as amended, also empowers the Commission to adopt the proposals contained in the Notice. As discussed below, the public in fact would greatly benefit from eliminating unnecessary regulation of broadcasters.

A guiding principle governing broadcast station application and licensing procedures is the preservation of the public’s ability to participate fully in the application process. The proposed rule changes serve this principle by recognizing the reality of the broadcasting industry today. Licensees are increasingly characterized by entities with multiple licenses, who currently must engage in repetitive and identical tasks time and again to complete current FCC application and report forms. Valuable Commission resources are needlessly consumed in processing these outdated and repetitive filings. Such unnecessary regulatory requirements only

tend to inhibit the most efficient and effective broadcast service to the public.

Easing the degree of regulation would inevitably decrease the cost of doing business for all broadcasters, large and small. Broadcasters could then shift their resources into truly tangible benefits to the public, such as more local programming and sponsorship of community events.

B. ELECTRONIC FILING OF FCC APPLICATIONS AND REPORTS

1. Permissive vs. Mandatory Electronic Filing

Cumulus suggests that the proposed electronic filing for all of the 15 key broadcasting application and reporting forms be made immediately permissive, with mandatory electronic filing required within a three-year period of time. Continuing to require paper submissions if an application is also filed electronically would actually create more paperwork, rather than less. This defeats the intent of the Notice and should not be adopted.

At the same time, the Commission should ensure that voluntary electronic filings do not place electronic filers at a disadvantage by virtue of differences in access to paper-filed applications or reports.^{3/} After three years, any entity still unable to comply with electronic filing requirements could be granted an indefinite exemption. The Commission could then post the applications and reports of such parties, which are likely to be limited in number, on its own World Wide Web site. An even playing field would be created for all, and those applicants more

^{3/} Cumulus similarly supports an electronically-maintained local public inspection file for each broadcasting station. This would render moot the time and energy spent on debating where a public file should be located (i.e., within the community of license or within a station's principal-community field-intensity signal coverage contour) and would further the public interest by expanding the accessibility of the public file to virtually anyone with a computer.

technologically advanced than others would not be unduly disadvantaged by their use of electronic filings to create easy and prompt on-line access by the public.

As the Commission states in its Notice, other Bureaus have adopted electronic filing requirements with no major problems. The Mass Media Bureau should follow their lead.

C. BENEFITS OF STREAMLINING THE APPLICATION PROCESS

1. “Long-Form” Assignment and Transfer Applications

The Notice acknowledges the cumbersome and time-consuming tasks that the Mass Media Bureau must undertake to implement the application process. Cumulus strongly supports eliminating the requirement to submit the underlying sales contracts pertaining to FCC Forms 314 and 315, in order to reduce the paperwork associated with such transactions. The business terms of such contracts generally are irrelevant to the Commission’s consideration of assignment and transfer applications. Moreover, it has been Cumulus’ experience that the submission of such contracts unduly hinders or delays the processing of assignment or transfer applications, while rarely, if ever, conferring any true benefits.

Time is of the essence in virtually every assignment or transfer application, where needless delays can adversely affect station performance and jeopardize a transaction. At the same time, the Commission and its staff must be able to act on the transaction with confidence that it will comply with all applicable FCC rules and regulations. Relying on an applicant’s certification to that end would satisfy the Commission’s obligations under Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §310(d), to serve the public interest, convenience and necessity, while also keeping up with the fast-paced reality of the broadcasting business and broadcast sale transactions in today’s climate.

The Commission would then be free to concentrate its limited resources on the fundamental statutory and regulatory issues requiring review — such as compliance with the numerical station ownership limits in a particular market, foreign ownership restrictions, and identification and consideration of the qualifications of attributable parties to the application. Simplifying the application by eliminating the need to submit the underlying contract promotes the Commission's ability to focus on these core application processing responsibilities.

2. "Short-Form" Applications

Another streamlining proposal raised in the Notice is the elimination, in most instances, of the requirement for "short-form" applications for the Commission's consents to technical or insubstantial assignments of broadcast licenses or transfers of control of corporations holding such licenses. Cumulus supports the proposed elimination of such applications.

The types of *pro forma* assignment and transfer applications that this proposal seeks to eliminate are, with rare exception, routinely granted. It is highly unlikely that this proposal would in any way prejudice the public interest. On the contrary, Section 310(d) permits the Commission to find that certain classes of *pro forma* ownership changes are *per se* in the public interest. Precedent for this streamlining practice can be found in Section 78.35(c) of the Commission's Rules, 47 C.F.R. § 78.35(c), which dispenses with the need for prior Commission approval in the CARS service, in cases where an ownership transfer does not result in a change in the identity of the licensee or the ultimate control of the interest in the licensee.

As the holder of multiple broadcast licenses, Cumulus has found itself forced to fill out application forms that ultimately disclose nothing more than mere reporting formalities over and over, while advancing no particular public interest. The proposal that notification of a *pro*

forma assignment or transfer be given, in lieu of the current, more onerous application and approval requirement, wisely balances the rights of the public to important information and the best use of the resources of broadcast applicants and the Commission.

Cumulus further recommends that any transactions falling outside the scope of post-closing notification requirements be made subject to less onerous application requirements. To the greatest extent possible, the application should be limited to “yes/no” forms of questions, as opposed to more detail-laden questions such as those contained in the FCC Form 316. As suggested in the Notice, the Commission could implement an audit system to verify information and could impose sanctions for non-compliance or misrepresentation, thereby striking the necessary balance between the public and private interests at a much lower cost for all concerned.

3. Radio Contour Maps

The Commission should eliminate the requirement to submit predicted principal-community signal contour maps in radio station assignment and transfer applications. As the Notice suggests, applicant certification based upon the completion of detailed worksheets should allay any concerns over possible abuse. Applicants would still be required to consult with a qualified party in order to confirm compliance with Section 202(b) of the Act and the Commission’s Rules. Eliminating the requirement that an applicant file such maps with the Commission will likely reduce the time consumed in processing the applications — a benefit to the applicant, the Commission, and the public.

4. Filing of Ownership Reports

Relaxing the Ownership Report filing requirement from a yearly task to one that is necessary only once every four years would be commendable. Cumulus supports further relaxing

this requirement to mandate the filing of a complete Ownership Report only once every eight years, in accordance with the length of broadcast license terms. In situations where there are multiple licenses for stations in various states expiring at different times, a licensee could select a particular station and use that station's license term as the time frame for filing the Ownership Report for the licensee. Since any substantial changes to the ownership of the licensee would still have to be approved in advance by the Commission by means of a long-form application, the Commission would maintain its ability to review the qualifications of all significant attributable parties in the ownership of the licensee.

The Commission likely realizes that the current ownership reporting regimen is not ideally suited for large entities with numerous direct and indirect owners at various partnership, corporate, or limited liability company levels and multiple licenses. In fact, sometimes the ownership information is outdated by the time that the Ownership Report is submitted to the Commission, due to the very nature of the owners of the entity holding the licenses. Moreover, the process of amending each transfer application to include up-to-date ownership information is highly burdensome, while providing no additional relevant information to the Commission or the public.

As the Commission correctly observes in the Notice, it has the ability to obtain full, current ownership information from any licensee at any time.^{4/} A licensee also could voluntarily establish an electronically-maintained central file with current information pertaining to its ownership.^{5/} In any event, much of the information is generally available from other sources since

4/ Notice, *supra*, at page 30.

5/ This proposal is applicable to the pending proceeding in MM Docket No. 97-138.

many of today's broadcast licensees are publicly-owned companies, and their ownership information is a matter of record with the Securities and Exchange Commission and other agencies.

III. CONCLUSION

The rule changes proposed in the Notice would substantially reduce applicant and licensee burdens, allow better utilization of the resources of the Mass Media Bureau, and preserve the public's ability to participate fully in the broadcast licensing and regulatory processes. The proposals for the Commission to rely upon applicant certifications and current technology to ensure compliance with its rules and regulations are especially timely and commendable. Cumulus therefore strongly supports prompt and favorable action on the proposals in the Notice.

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